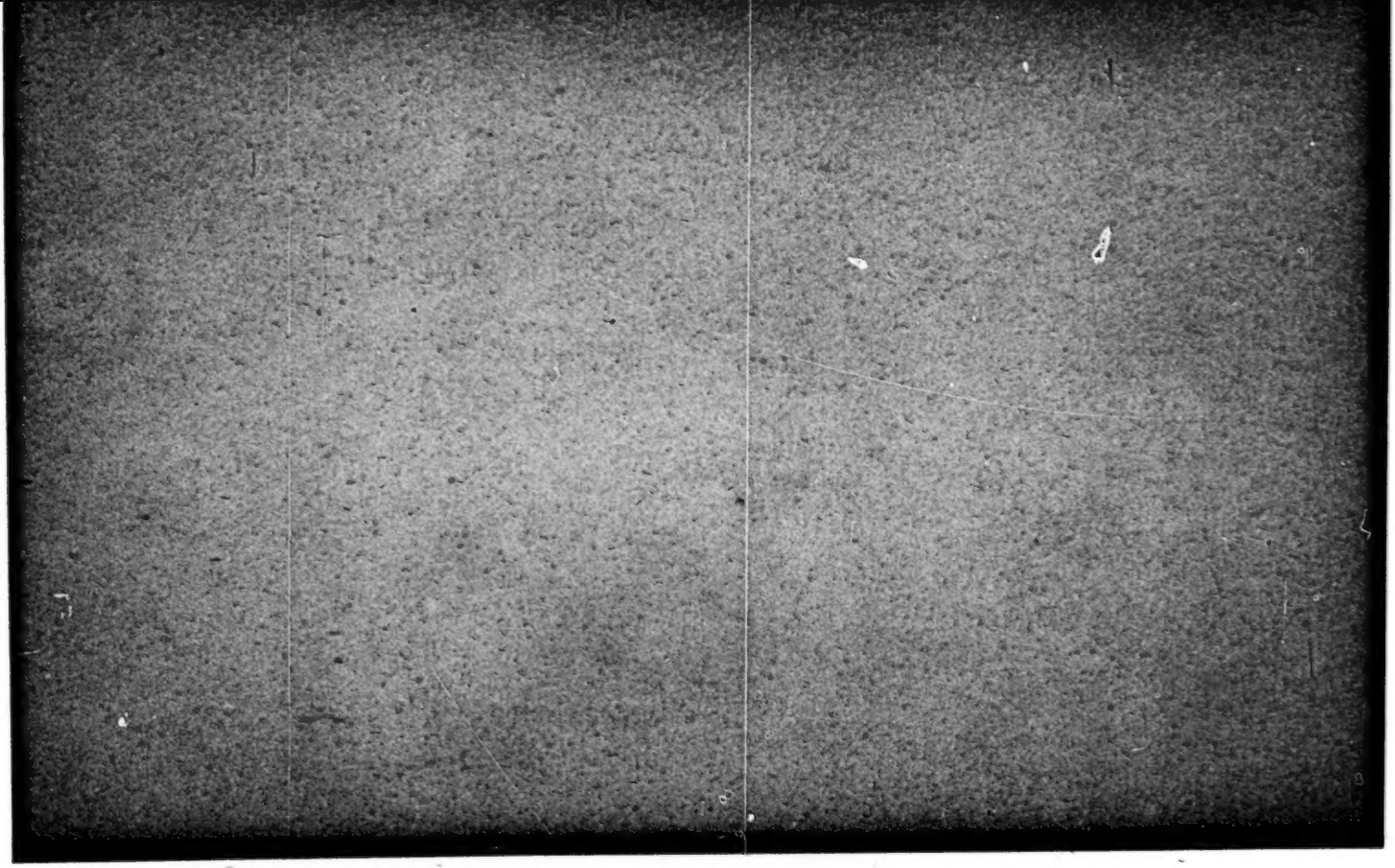

JAN 4 1974

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-1018

UNITED STATES OF AMERICA,
Petitioner,

v.

MARTIN DeWALT MAZURIE, *et al.*,
Respondents.

MOTION OF SHOSHONE AND ARAPAHOE TRIBES OF THE WIND RIVER INDIAN RESERVATION, WYOMING, FOR LEAVE TO FILE STATEMENT AMICI IN SUPPORT OF MOTION OF UNITED STATES FOR LEAVE TO FILE A PETITION FOR A WRIT OF CERTIORARI OUT OF TIME

AND

STATEMENT OF SHOSHONE AND ARAPAHOE TRIBES IN SUPPORT OF MOTION OF UNITED STATES FOR LEAVE TO FILE OUT OF TIME A PETITION FOR A WRIT OF CERTIORARI UNDER RULE 22(2)

GLEN A. WILKINSON
1735 New York Avenue, N.W.
Washington, D.C. 20006
Attorney for the Arapahoe Tribe

MARVIN J. SONOSKY
2030 M Street, N.W.
Washington, D.C. 20036
Attorney for the Shoshone Indian Tribe

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The Shoshone Indian Tribe and the Arapahoe Indian Tribe of the Wind River Indian Reservation, Wyoming move for leave to file, as *amici*, the accompanying statement in support of the motion of the United States for leave to file a petition for a writ of certiorari out of time.

In support of this motion, the Tribes show that they are the real parties in interest; that the decision below denies the protection of the Indian liquor laws to the Indians of the Wind River Reservation; and that the Tribes are the helpless victims of a mistake made by the Department of Justice in failing to file a petition for a writ of certiorari within the 30 days prescribed by Rule 22(2).

In the interest of justice, the Tribes urge that the Court grant this motion and the motion of the United States.

Respectfully submitted,

GLEN A. WILKINSON
1735 New York Avenue, N.W.
Washington, D.C. 20006
Attorney for the Arapahoe Tribe

MARVIN J. SONOSKY
2030 M Street, N.W.
Washington, D.C. 20036
Attorney for the Shoshone Indian Tribe

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1. *The Tribes and their people are the real parties in interest and will suffer the consequences of the decision below.* The Wind River Indian Reservation established by treaty in 1868 is owned and occupied by the Shoshone and Arapahoe Indian Tribes. See *Shoshone Tribe v. United States*, 299 U.S. 476. It is Indian country (18 U.S.C. 1151). The Indian liquor laws (18 U.S.C. 1151-1156) were enacted for the protection of Indians in Indian country. Congress gave Indian tribes the option of deciding whether they wished liquor in Indian country, except as to nonIndian communities in Indian country. (18 U.S.C. 1161.)

2. *The Tribes and their people had no choice but to rely on the United States in the management of the*

litigation. The Indian liquor laws are criminal statutes. Their enforcement is within the exclusive power of the United States. The Tribes had no choice but to rely upon the United States in the management of the litigation. The Tribes did what they could and appeared in the proceeding below as *amici.*

3. *The Tribes and their people should not be penalized for the administrative confusion leading to the failure to file within the prescribed 30 days.* The Indian liquor laws, while in the criminal code, in a real sense are laws regulating liquor traffic in Indian country. In this case, the primary issues presented under those laws are issues of Indian law, not criminal law. For that reason, this case fell within the administrative jurisdiction of the Land and Natural Resources Division of the Department of Justice, the division responsible for litigation relating to Indian matters. The Tribes urged the Department of Justice to seek review of the decision below and relied upon the United States to timely file a petition for a writ of certiorari. As explained in the motion of the United States, confusion arose over the time within which the petition should be filed, because the Lands and Natural Resources Division ordinarily handles civil Indian litigation where the time for filing is 90 days. But, surely, it is not in the interest of justice to permit the damages flowing from the Government's mistake to fall on the Tribes and their people.

The respondents in this case are now operating their liquor establishment and have been ever since the court of appeals issued its mandate. The Government requested no stay of mandate. The Tribes were powerless to do so. The Superintendent of the Wind River Indian Agency advises that since the decision below, another liquor business has opened in the Crowheart district of the

reservation, although the governing body of the Tribes had denied a license for that business following a public meeting of the Indian people of the district on the issue. The Superintendent further advises that since the decision below the local board of county commissioners has issued another liquor license and the licensee is now preparing to open for business on the reservation.

CONCLUSION

The Tribes, as the real parties in interest and the potential victims of a mistake beyond their control, urge the Court to grant the motion of the United States to allow the petition for a writ of certiorari to be filed out of time.

Respectfully submitted,

GLEN A. WILKINSON
1735 New York Avenue, N.W.
Washington, D.C. 20006

Attorney for the Arapahoe Tribe, Amicus Curiae

MARVIN J. SONOSKY
2030 M Street, N.W.
Washington, D.C. 20036

Attorney for the Shoshone Indian Tribe, Amicus Curiae